R. J. Causey and wife, Mrs. Myrtle Causey, for the alleged death of their son Stewart Causey, against Sabine Towing Company, filed June 6, 1930, No. 34,908, on the docket of the District Court of Jefferson County, 58th Judicial District of Texas, claiming 40,000.00

Mrs. Adolphine Durio, administratrix of the estate of her husband, Cyrus Durio, against Sabine Towing Company, filed June 4, 1930, No. 34,888, on the docket of the District Court of Jefferson County, 58th Judicial District of Texas, claiming $30,000.00

Mrs. Bertha M. Pyle, administratrix of the estate of her husband, Orbilleg Pyle, against Sabine Towing Company, filed June 4, 1930, No. 34,891, on the docket of the District Court of Jefferson County, 60th Judicial District of Texas, claiming 30,000.00

[fol. 6] Mrs. Sophia Brennan, administratrix of the estate of her husband, William Brennan, against Sabine Towing Company, filed June 4, 1930, No. 34,889, on the docket of the District Court of Jefferson County, 60th Judicial District of Texas, claiming 40,000.00

All of the above named litigants in said suits are represented by Messrs. Howth, Adams and Hart, as their attorneys in said suits.

Seventh. That the loss and damages claimed against the petitioner-libelant by persons because of the sinking and loss of said towboat, greatly exceed the amount or value of the interest of the petitioner as owner of said tug, machinery, etc., after said loss, including towage possibly earned by said towboat. Upon and after the happening of said loss said towboat, her machinery, tackle, apparel, etc., became a wreck and total loss, and petitioner is informed and believes was then practically worthless, and the petitioner's interest therein became and was of little or no value. The towboat "Edgar F. Coney" stood to earn Three Hundred Ten Dollars ($310.00) per day in full for her services upon completing the voyages undertaken, and was employed in this service during a period of less than two days, so that

the amount of her earning for her services would not be in excess of Six Hundred Twenty Dollars ($620.00).

Eighth. That petitioner claims full and complete exoneration of and exemption from liability as owner of the steam towboat "Edgar F. Coney" for the losses, damages, injuries and destruction occasioned or incurred by or arising out of the sinking and loss of the said towboat, because of [fol. 7] the facts aforesaid in respect to the claims for damages and petitioner pleads said facts as a valid defense thereto. While petitioner does not admit in any way that it is under any liab-l-ty for the losses and damages occurring as aforesaid, and desires to contest said alleged liability, it claims the benefit of the limitation of liability provided for in the various acts of congress, and particularly provided for in sections 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States, as well, also, of the various acts amendatory thereof and those supplemental thereto, and in the alternative in the present proceedings, your petitioner further desires by reason of the facts hereinbefore set out, to limit its liab-lity, if any there be found, for any and all loss, destruction, damage or injury or other claim alleged to be caused by or resulting from the said loss of said towboat and to that end petitioner elects to surrender its interest in and to the wrecked towboat "Edgar F. Coney", its tackle, apparel, etc., as and where it lies, to a trustee, to be appointed by the Court, and submits herewith a stipulation with surety for the payment into Court of the sum of Six Hundred Twenty Dollars ($620.00), which represents the maximum amount of towage earning of the said towboat.

Ninth. All and singular the premises are true and correct and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that this Honorable Court will be pleased to appoint a trustee to whom the rights, title and interest of petitioner in and to whatever remains of the towboat "Edgar F. Coney", her tackle, apparel, equipment, etc., as and where it lies in the Gulf of Mexico, may be made; and that security for her towage earnings [fol. 8] pending, if any there be, covering her two days' services at Three Hundred Ten Dollars ($310.00) per day;

wherein a condition of said bond shall be that said money shall be paid unto the Clerk of Court as and when the Court shall order in event the Court shall determine that this money is subject to payment into the registry of the Court; that the Court will also appoint a commissioner to receive proof of claims in respect of the premises, in accordance with the rules and practice of this Court; that it will also issue its monition to all persons whomsoever claiming damages by reason of the aforesaid loss of the said towboat "Edgar F. Coney", citing them to be and appear before the said Commissioner at or before a time to be fixed in said writ, and make due proof, if they can, of their respective claim; and also commanding them to appear and to answer under oath all and singular the allegations of this petition; that this Court will issue its restraining order or preliminary injunction restraining the further prosecution of the above mentioned suits set out in the sixth article of this petition, with service thereof on Messrs. Howth, Adams & Hart, as the respective attorneys of record for plaintiffs in said suits, and further restraining the commencement hereafter of any suit, action or legal proceeding of any nature or description whatsoever against this petitioner by reason of the disaster, losses, damages, etc., hereinbefore mentioned; that the Court will upon due consideration pronounce for this petitioner and adjudge that it is not liable for any claims or demands arising out of the loss aforesaid of the said *two*boat "Edgar F. Coney" or, in the alternative, if any liability ever existed in favor of any one or more persons to any extent that it be discharged therefrom by reason of the surrender to the trustee as aforesaid of all of petitioner's rights, title and interests in and to the said towboat as aforesaid; and upon payment into Court, if the Court shall so direct, of the aforesaid Six Hundred Twenty Dollars ($620.00), representing the towage service [fols. 9-33] aforesaid; and that this petitioner may have such other, further or different relief in respect to the premises as in law and justice petitioner may be entitled to receive and the Court competent to grant.

Sabine Towing Company, Inc., (Org. Sgd.) by M. T. Ball, President. (Org. Sgd.) John D., M. A. & Edwin H. Grace, Proctors for Petitioner.

Duly sworn to by Munger T. Ball. Jurat omitted in printing.

[fol. 34] IN UNITED STATES DISTRICT COURT

AMENDED CLAIM AND ANSWER OF SOPHIA BRENNAN ET ALS.—
Filed February 24, 1931

Come now Mrs. Sophia Brennan, suing herein as administratrix of the estate of William Brennan, deceased, and acting on behalf of herself and her minor children, Audrey Brennan, William Brennan, Jr., and Gloria Jean Brennan, and also Mrs. Bertha M. Pyle, administratrix of the estate of Arville Glen Pyle, deceased, acting for herself, and also Mrs. Adolphine Durio, administratrix of the estate of Cyrus Durio, deceased, acting for and — behalf of herself and her minor children, Bertha Durio, Mildred Durio, Erline Durio and Joseph Durio, and also R. J. Causey, administrator of the estate of Stewart Causey, deceased, acting for and on behalf of himself and his wife, Mrs. Myrtis Causey, and also Ora Kenney, Administratrix of the estate of Joseph Hayden Kenney, deceased, acting on behalf of herself and her minor children, Joseph Hayden Kenney, Jr., and Kathleen Kenney, and also W. M. Crook, administrator of the estate of C. L. Nelson, deceased, acting on behalf of Ruth Nelson, widow of C. L. Nelson, and also Ruth Anderson, administratrix of the estate of H. A. Anderson, deceased, suing on behalf of herself, and also Mrs. Jennie Royackers, suing herein as administratrix of the estate of Edward C. Van Beeck deceased, with leave of the Court first obtained, file this their first amended answer and claim, in a cause of action, civil and maritime, instituted by the Sabine Towing Company, and for such answer and claim said claimants allege and propound as follows:

1

They admit the matters and things set up in Paragraph one of the petition of Sabine Towing Company, incorporated, herein.

[fol. 35]

2

They admit the ownership of the tug boat "Edgar F. Coney" and admit that she was equipped with some character of wireless, but affirmatively state that said wireless was not in proper working order and deny the competency of the operator on board. They also admit that said tow

boat had been engaged from the time of her construction to the time of her loss in various towing service, but deny her seaworthiness and fitness for the service in which she was engaged at the time of her loss.

3

They admit that the "Edgar F. Coney" commenced on a voyage from Smiths Bluff in the Port Arthur canal on the 27th day of January, 1930, but deny that she was then tight, strong, properly manned, tackled and appareled for the voyage and deny that she was in a seaworthy condition and deny on information and belief the qualifications of the crew as alleged.

4

These claimants deny that the weather was such as to indicate a safe voyage when the trip was commenced but aver on the contrary that the indications were such that extreme care should have been exercised with respect to the seaworthiness and condition of the barge and tug. They have not sufficient information about the conditions on the voyage to make a categorical denial and, therefore, deny the things alleged in paragraph four occurring on the voyage on information and belief. They admit the employment of divers and admit that none of the crew of the "Edgar F. Coney" survived, and allege on information and belief that so far as is known all of the members of said crew are now dead.

[fol. 36]

5

They deny that the loss of the lives of the crew was without the fault on the part of the petitioner, and deny that the same occurred without the privity and knowledge of the petitioner, its officers and duly authorized agents, and deny that the loss of said tow boat was occasioned by a peril of the sea but aver that it was occasioned through the negligence of the petitioner and with the privity of its officers.

6

They admit the matters and things set forth in paragraph six of the petition.

7

They admit that the damages claimed on account of the loss of said tow boat greatly exceed the value of said tow boat and its freight and admit that said tow boat is a total loss.

8

The claimants deny that petitioner is entitled to full and complete exoneration and exemption from liability as claimed and deny that it is entitled to the benefit of liability as claimed, and deny that the petitioner is ent-tled to surrender its interest in the "Edgar F. Coney" by the payment of $620.00 and on the contrary allege that this petition should be dismissed for the reason that the "Edgar F. Coney" was engaged in the towage of the barge "Pure Detenox" which said barge and tow boat were constituted one instrument in navigation, each one of said vessels having its part to play in the navigation of the flotilla and each being responsible to the other for correct navigation and [fol. 37] these claimants aver that the "Edgar F. Coney" would not have sunk had it not been for the weight dragging her over in the water and they, therefore, aver and allege that before any petition for limitation of liability should be considered at all or heard that said petitioner be required to surrender the value of the barge "Pure Detenox" as it existed at the end of the voyage, together with the freight, and in making these allegations the claimants desire to make it clear that they deny that petitioner is entitled to limitation in any event, even with the surrender of the entire flotilla because they say that said loss and damage was occasioned through the negligence and the fault of the petitioner and with the privity and knowledge of its duly authorized agents.

9

Claimants deny all and singular the premises are true but admit the jurisdiction of this Court provided the Court finds that it has any right to proceed with the limitation at all.

Wherefore, claimants having made full answer to the petition and libel of the Sabine Towing Company, here and

now file their claims in this cause and for such claims allege and propound as follows:

10

That William Brennan was the husband of Mrs. Sophia Brennan and the father of Audrey Brennan, William Brennan, Jr., and Gloria Jean Brennan; that Orville Glen Pyle was the husband of Mrs. Bertha M. Pyle; that Cyrus Durio was the husband of Mrs. Adolphine Durio and the father of Bertha Durio, Mildred Durio, Erline Durio and Joseph Durio; that Joseph Hayden Kenney was the husband of [fol. 38] Mrs. Ora Kenney and the father of Joseph Hayden Kenney, Jr., and Kathleen Kenney; that Stewart Causey was the son of R. J. Causey and Mrs. Myrtis Causey; that C. L. Nelson was the husband of Mrs. Ruth Nelson; that H. A. Anderson was the husband of Mrs. Ruth Anderson; that Edward C. Van Beeck was the son of Mrs. Jennie Royackers (whose name was formerly Jennie Van Beeck, her husband and the father of the deceased being dead, and she thereafter having married * * * Royackers).

11

The claimants allege that prior to the 27th day of January, 1930, the petitioner herein was desirous of moving the barge "Pure Detenox" loaded with a cargo to Pensacola, Florida, and for this purpose used its towboat "Edgar F. Coney" to tow said barge and for the purpose of said voyage the petitioner employed William Brennan as Master, Joseph Hayden Kenney as first mate, Orville Glen Pyle as Chief Engineer, Cyrus Durio as Steward, Stewart Causey as sailor, H. A. Anderson as fireman, C. L. Nelson as fireman, and Edward C. Van Beeck as second mate.

12

That while on said voyage to Pensacola and while aboard said tug "Edgar F. Coney", Captain William Brennan, Joseph Hayden Kenney, Orville Glen Pyle, Cyrus Durio, Stewart Causey, H. A. Anderson, C. L. Nelson and Edward C. Van Beeck were drowned on the high seas of the Gulf of Mexico through the negligence of the petitioner, the Sabine Towing Company, its officers and agents, which said negligence was the proximate cause of the drowning and death of the parties herein named.

[fol. 39] 13

That the negligence of the petitioner which proximately caused the death of the parties herein named was as follows:

(a) That the vessel was not properly manned.

(b) That said vessel was unseaworthy in that same was top heavy and thereby dangerous to the lives of the crew and not proper to be sent to sea in the condition it was when sent out by petitioner.

(c) That the petitioner had changed the stability and buoyancy of said vessel, by repairs and additions which it had made and placed on said vessel after purchase thereof by petitioner.

(d) That the petitioner failed to use due diligence with respect to inspection of said vessel prior to its being sent to sea on the trip during which it was lost.

(e) That the petitioner was at fault in allowing and ordering said flotilla to proceed to sea on its last trip in view of the weather conditions, both those then and there existing and those likely to occur, and of all of which said said weather conditions petitioner had both actual and constructive notice and knowledge, and was particularly at fault and guilty of negligence in view of the unseaworthy condition of the tug in charge of said flotilla.

14

That William Brennan was thirty-seven (37) years of age and at the time of his death was earning the sum of $200.00 per month exclusive of room and board and was contributing and would have contributed most of his earn-
[fol. 40] ings to his wife and children for many years to come; that Cyrus Durio was fifty-two (52) years of age and at the time of his death was earning the sum of $100.00 per month, exclusive of room and board and was contributing and would have contributed most of his earnings to his wife and children for many years to come; that Orville Glen Pyle was thirty-four (34) years of age, and at the time of his death was earning the sum of $190.00 per month, exclusive of room and board, and was contributing and would have contributed most of his earnings

to his wife; that Joseph Hayden Kenney was thirty-four (34) years of age, and at the time of his death was earning the sum of $165.00 per month, exclusive of room and board, and was contributing and would have contributed most of his earnings to his wife and children; that Stewart Causey was a young and robust *young* man and at the time of his death was earning the sum of $100.00 per month, exclusive of room and board, and was contributing and would have contributed most of his earnings to his mother and father; that C. L. Nelson was a young and robust man and at the time of his death was earning the sum of $150.00, exclusive of room and board and was contributing and would have contributed most of his earnings to his wife; that H. A. Anderson was a young and robust man and at the time of his death was earning the sum of $150.00 exclusive of room and board and was contributing and would have contributed most of his earnings to his wife; that Edward C. Van Beeck was at the time of his death 33 years of age, unmarried, and a strong, robust, healthy man, and was earning the sum of approximately $165.00 per month, exclusive of room and board, and was contributing and would have contributed to the support of claimant, his mother, a large part of his earnings, and was at said time actually contributing and had long prior thereto been contributing to her support the sum of approximately Sixty Dollars ($60.00) per month, as his mother was wholly dependent upon him for support and maintenance; that [fol. 41] every and all of the above mentioned claimants were dependent upon their respective decedents for support and maintenance, and as a direct and proximate result of the negligence of the petitioner, as aforesaid, have sustained actual damages in the total sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

15

All and singular the premises are true.

Wherefore, the claimants here and now file their claims and pray that the petition for limitation of liability of the petitioner, the Sabine Towing Company, be denied and that these claimants have judgment for the full amount of their damages as hereinabove alleged, and in the event that it should be held that the petitioner has a right to limitation of liability, then that such limitation be conditioned

upon the filing of a bond for the value of the barge "Pure Detenox" and her freight earned and pending, and that they be awarded their proportionate shares of the property now within the jurisdiction of the Court or that may be hereafter required to be brought within the jurisdiction of this Court to satisfy the claims arising out of the loss and destruction of the tug "Edgar F. Coney" as hereinabove described, and for such other and further relief as in law and justice they may be entitled to receive.

Howth, Adams & Hart, by M. G. Adams, 305 Goodhue Building, Beaumont, Texas. Lockhart, Hughes & Lockhart, Locktay Building, Galveston, Texas. Crook, Lefler, Cunningham & Murphy, Proctors for Claimants, American Natl. Bank Building, Beaumont, Texas.

[fols. 42-45] *Duly sworn to by M. G. Adams. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 46] IN UNITED STATES DISTRICT COURT

INTERLOCUTORY DECREE ON QUESTION OF LIABILITY, ETC.—Filed July 13, 1933

Petition having been filed herein on the 17th day of June, 1930, by the Sabine Towing Company, Inc., under the provisions of Sections 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States and of the various acts amendatory thereof and those supplemental thereto, for the limitation of its liability for the loss of life, destruction, damage and injury occasioned by or resulting from the sinking of the steam tug Edgar F. Coney, on January 27, 1930; and,

The said petitioner claiming, and it being a fact, that the said tug Coney was a wreck and total loss, and having conveyed the said vessel in its condition after the sinking to a trustee duly appointed herein; and further alleging that the tow boat Edgar F. Coney stood to earn $310.00 per day in full for her services upon completing the voyage undertaken and was employed in the service during the period of less than two days, so that the amount of earning for

the services would not be in excess of $620.00; and having submitted a stipulation with surety for the payment into Court of the said sum of $620.00 as representing the maxi-
[fol. 47] mum amount of towage earning of the said tow boat; and,

Petitioner not having surrendered the barge Pure Detenox, which was being towed at the time by the said tug Coney and not having surrendered or offered to surrender at the time of the filing of the petition herein, either the said barge Pure Detenox or its value; and,

This Court having heretofore, to-wit, on or about the 28th day of June, 1930, issued a monition against all persons claiming damages for any loss, destruction, damage or injury or loss of life occasioned by the said sinking of the Coney requiring such persons to appear before this Court and make due proof of their respective claims before J. B. Morris, Esquire, the Commissioner appointed by the Court, at his office in Beaumont, Jefferson County, Texas, on or before the 6th day of May, 1930; and

Public notice of said monition having been duly given, as required by law and the practice of this Court, and the said Commissioner having duly made and filed his report bearing date the 20th day of July, 1931, wherein and whereby it appears that certain claims there enumerated and no others have been presented pursuant to said monition; and,

The matter having come on to be heard by the Court upon the said petition for limitation of liability and the answers thereto of Mrs. Sophia Brennan, suing herein, as administratrix of the estate of William Brennan, deceased, and acting on behalf of herself and her minor children, Audrey Brennan, William Brennan, Jr., and Gloria Jean Brennan, and also Mrs. Bertha M. Pyle administratrix of the estate of Orville Glen Pyle, deceased, acting for herself, and also
[fol. 48] Mrs. Adolphine Durio, administratrix of the estate of Cyrus Durio, deceased, acting for and on behalf of herself and her minor children, Bertha Durio, Mildred Durio, Erline Durio and Joseph Durio, and also R. J. Causey, administrator of the estate of Stewart Causey, deceased, acting for and on behalf of himself and his wife, Mrs. Myrtis Causey, and also Ora Kenney, administratrix of the estate of Joseph Hayden Kenney, deceased, acting on behalf of herself and her minor children, Joseph Hayden Kenney, Jr., and Kathleen Kenney, and also W. M. Cook, adminis-

trator of the estate of C. L. Nelson, deceased, acting on behalf of Ruth Nelson, widow of C. L. Nelson, and also Ruth Anderson, administratrix of the estate of H. A. Anderson, deceased, suing on behalf of herself and also Mrs. Jennie Royackers, suing herein as administratrix of the estate of Edward C. Van Beeck, deceased, and the said cause having been argued and submitted by Messrs. John D., M. A. & Edwin H. -race, proctors for the Sabine Towing Company, Inc., and by Howth, Adams & Hart, Crook, Lefler, & Cunningham and Lockhart, Hughes & Lockhart, proctors for every and all of the above named claimants, and due deliberation having been had,

Now, on motion of the said proctors for the claimants, it is

Ordered, Adjudged and Decreed that the said petitioner, Sabine Towing Company, Inc., is not entitled to exemption from any liability whatsoever as claimed by it in its petition and its prayer for exoneration from or limitation of liability for the sinking of the tug Coney and the resulting loss of life and damages be and the same is hereby in all things denied.

It is further Ordered Adjudged and Decreed that the said claimants, Mrs. Sophia Brennan, suing herein as administratrix of the estate of William Brennan, deceased, and acting on behalf of herself and her minor children, Audrey [fol. 49] Brennan, William Brennan, Jr., and Gloria Jean Brennan, and also Mrs. Bertha M. Pyle, administratrix of the estate of Orville Glenn Pyle, deceased, acting for herself, and also Mrs. Adolphine Durio, administratrix of the estate of Cyrus Durio, deceased, acting for and on behalf of herself and her minor children, Bertha Durio, Mildred Durio, Erline Durio and Joseph Durio, and also R. J. Causey, administrator of the estate of Stewart Causey, deceased, acting for and on behalf of himself and his wife, Mrs. Myrtis Causey, and also Ora Kenney, administratrix of the estate of Joseph Hayden Kenney, deceased, acting on behalf of herself and her minor children, Joseph Hayden Kenney, Jr., and Kathleen Kenney, and also W. M. Crook, administrator of the estate of C. L. Nelson, deceased, acting on behalf of Ruth Nelson, widow of C. L. Nelson, and also Ruth Anderson, administratrix of the estate of H. A. Anderson, deceased, suing on behalf of herself, and also Mrs. Jennie Royackers, suing herein as administratrix of the

estate of Edward C. Van Beeck, deceased, be and they are hereby adjudged entitled to recover of and from the said petitioner, Sabine Towing Company, Inc., all damages that have accrued to them respectively by reason of the sinking of the said tug Coney, and they said claimants above named are hereby authorized and directed to make proof before the commissioner appointed herein.

It is Further Ordered that the appointment heretofore made in this cause of J. B. Morris, Esquire, as Commissioner to hear the testimony and pass upon the amount of the damages be and the same is hereby revoked and canceled; and it is further ordered that Samuel C. Lipscomb, Esquire, be and he is hereby appointed Commissioner herein to take and hear the testimony on the amount of damages the claimants have sustained and to determine the amount thereof.

[fols. 50-163] It is Further Ordered that this cause be and is hereby referred back to the said Samuel C. Lipscomb, Esquire, duly appointed commissioner herein, to take further proofs that may be offered as to the amount of damages sustained by every and all of the claimants herein and to report thereon to this Court with the evidence taken before him with respect to the various claims for death and with his opinion in addition as respects the amount of the damages, etc., with all convenient speed; such proof to be made either orally before the said commissioner or by deposition in due course of usual and legal procedure applicable in such matters; hearings before the said commissioner to be brought on by any party in interest by notice of five days.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

[fols. 164-340] In United States District Court

Statement of Evidence Before Commissioner

* * * * * * *

Stipulation as to Certain Facts

Mr. Adams:

The stipulation is: "It is hereby stipulated that the decedent at the time of his death was unmarried and left sur-

viving him his mother, Jennie Royackers, a brother, Charles Van Beeck, age 34, and two step-brothers, Charles Royackers, age 24, and Joseph Royackers, age 36, and a step-father, Joseph Royackers. The decedent was born in Antwerp, Belgium, on March 12th, 1897. At the time of his death he was a mate on board the Edgar F. Coney and was contributing to the support of his mother at the rate of $40.00 to $50.00 per month. His mother died in July, 1931. At the time of her death she was 58.

[fol. 341] IN UNITED STATES DISTRICT COURT

REPORT OF COMMISSIONER—Filed February 28, 1935

To the Honorable Randolph Bryant, Judge:

In accordance with the interlocutory decree heretofore entered in this cause, I have heard evidence on behalf of the claimants and the petitioner as to damages sustained by the several claimants for the death of certain members of the crew of the tug "Edgar F. Coney," who lost their lives as a [fol. 342] result of the sinking of the tug in the Gulf of Mexico on January 28, 1930.

According to the report of the casualty made by M. T. Ball, President of the Sabine Towing Company, the crew consisted of fourteen men, all of whom lost their lives. The survivors of only eight of the deceased seamen offered testimony as to damages. They were, Mrs. Ora K. Kenney, widow of J. H. Kenney, Mrs. Sophia Brennen, widow of William Brennen, Mrs. C. Durio, widow of C. Durio, Mrs. Ruth Anderson, widow of H. A. Anderson, Mrs. Bertha Pyle, widow of O. G. Pyle, R. J. Causey, father of Stewart Causey, Mrs. Ruth Nelson Dumas, widow of C. L. Nelson, and Mrs. Jennie Royackers, mother of Charles Van Beeck.

The quantum of recovery is governed by Section 33 of the Merchants Marine Act (46 U. S. Code Ann. Sec. 688) which gives to the representatives of a seaman who loses his life as result of injuries sustained in the course of employment the same right of action for damages as that accorded in cases of railway employees by the Federal Employees Liability Act. The statute provides, among other things:

"And in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable."

Of this statute Mr. Justice Sanford says in the case of Lindgreen vs. U. S., 281 U. S. 39, 74 Law Ed. 689:

"By this act, as heretofore construed by this Court, the prior maritime law of the United States was modified by giving to seamen injured through negligence the rights given to railway employees by the Federal Employees Liability Act and its amendments, and permitting these new and substantive rights to be asserted and enforced in actions in personam against employees in Federal and State [fol. 343] Courts administering common law remedies, or in suits in admiralty in Courts administering maritime remedies."

It is held that the damages are to be limited strictly to pecuniary losses, and that the loss of society or companionship is not to be taken into consideration in fixing the damages; American Railroad Co. etc., vs. Didrickson, 227 U. S. 145, 57 Law. Ed. 456; and in the Case of Michigan Railway Co. vs. Vreeland, 227 U. S. 59, 57 Law. Ed. 417, the Court, speaking through Mr. Justice Lurton, at page 422, has this to say:

"The pecuniary loss is not dependent upon any legal liability of the injured person to the beneficiary * * *. There must, however, appear some reasonable expectation of pecuniary assistance or support of which they have been deprived."

In reference to the word "pecuniary", Judge Lurton in the same case has this to say:

"Nevertheless, the word as judicially adopted is not so narrow as to exclude damages for the loss of the services of the husband, wife or child, and when the beneficiary is a child, for the loss of that care, counsel, training and education which it might under the evidence, have reasonably received from the parent, and which can only be supplied by the service of another for compensation."

The clear purpose of the Act of Congress was to compensate beneficiaries as fully as money can for the loss sus-

tained. The age of the deceased, his earning capacity, his aptitude for work, his enterprise, or lack of it, the number and ages of his surviving beneficiaries and his contributions to their support and maintenance, his condition of health, his prospects for advancement, and matters of a like nature [fol. 344] are to be considered in arriving at the measure of damages sustained by the beneficiaries. There is no exact rule of law for determining compensation for pecuniary loss to the estate of the decedent. The amount should be fixed, as being now paid in a lump sum, and being freed of all the contingencies and uncertainties that inhere in human life will fairly compensate the estate for what it has been deprived of in the earnings or accumulations of the deceased had he lived out his life expectancy.

It will be noted that in the apportionment of the awards, particularly to children of certain of the claimants, there is a wide discrepancy. In fixing these awards I have considered the ages of the children and the probable financial benefit which they might have received from the deceased parent had he lived until they reached the age of majority. Some of the children being younger than others and some of the parents having earned greater or lesser sums, it is only natural that the probabilities of contributions would have been different, and these matters are taken into account in fixing the awards. Allowance is also made for the loss of counsel and training which the minor children might reasonably have expected to receive if the parent had lived, but no allowance is made for loss of society and companionship.

The claimants have introduced evidence in support of their claims based upon life expectancy and probable amounts which the deceased might have contributed to the support of the families and dependents. These calculations, made by an expert are not the sole basis of the awards. I have taken into account the earnings of the deceased seamen, their prospects for future advancement, the possibility of their being out of employment at times, and all other matters suggested by the evidence. While nearly all of the claimants testified that the expenses of the deceased ranged from ten to fifteen dollars per month, I think this approximation is [fol. 345] too low, considering that in the cases of married men their necessary expenses would more nearly approximate $25.00 per month (and in the cases of officers, standards of living would be higher, and contributions to their

family's support commensurately less), and their individual expenses would necessarily have cut down the benefits which their families might have received had they lived.

The claimants argue that, since the joint life expectancies of the deceased seamen and their beneficiaries ranged from fifteen years, as in the cases of Durio and Causey, and as high as twenty-five years, in the case of O. G. Pyle, allowance of damages on the basis of the cost of an annuity should be fixed as high as $35,000.00, depending upon the extent of the contributions made to the support of the beneficiaries. On the other hand, petitioner asserts that the greatest award should not exceed $7,500.00. I am wholly unable to agree with the contention of either the claimants or the petitioner, Testimony was introduced to the effect that at least one of the seamen was contributing as much as $185.00 per month to the support and maintenance of his family. It would be almost slanderous to say that a ship's officer, capable of earning $2,400.00 per year, would, over a period of twenty-five years contribute no more than $300.00 per year towards his family's support, either in money or money's worth. If the pecuniary loss to the family were fixed at $125.00 per month (as seems fairly reasonable in the case of a man capable of earning $200.00 per month, with several children looking to him for support), the loss to the family might justly be computed at $36,000.00, if it is supposed that the money was to be paid in annual installments. However the interest on that amount, even at 5%, would be $1,800.00 per year without any diminution of capital. The fact that one's life expectancy may be fixed at a given number of years is by no means an assurance that he will be gainfully [fol. 346] employed for that period of time. It is not the general rule that seamen will be continuously employed throughout the active periods of their lives; nor *it is* to be supposed that they will follow the sea always. Misfortunes are attendant upon every vocation. Unemployment, sickness and disability and other matters over which they have no control may interrupt, as Burns says, their best laid plans.

Other elements for consideration suggest themselves, particularly in the cases where children are involved, viz, as everyone knows, they require dental attention, correction of vision, and unremitting care in illness during their growing years. It is conceivable that the loss of a father and the

deprivation of that attention and solicitude naturally inherent in a parent would result in damage to the child, which cannot be fixed in terms of money, but which is nevertheless a pecuniary loss. (Railway vs. Vreeland, supra.) All of these matters have been given careful attention in arriving at the awards which are hereinafter made.

The decisions are replete with statements that life and annuity tables are not absolute guides for determining loss sustained by the death. It is the duty of the Commissioner, upon a review of all the evidence to award a fair and reasonable compensation, taking into consideration what the income of the deceased seaman would probably have been, how long it would have lasted, and all contingencies to which it was liable.

Reference is made to three cases commented upon by claimants and petitioner. They are The City of Rome, 48 Fed. (2d) 333, Briscoe vs. The United States, 65 Fed. (2d) 404, and Ryan Towboat Co. vs. Draper, 263 Fed. 31.

[fol. 347] In the City of Rome Judge Caffey had up for consideration the report of a Commissioner fixing awards for the loss of thirty-two lives. It appears from the report that most of the deceased seamen were young men, with high life expectancies, some of them being shown to have received pay in excess of $300.00 per month. The greatest single award fixed in that case was $35,000.00 for the death of a senior lieutenant, age thirty-two, receiving a pay of $336.00 per month. The awards to other claimants were in some instances small and in others larger, dependent upon showing of earnings, life expectancies, etc. Mitigation of damages on account of remarriage was refused upon the authority of Georgia Railroad & Banking Co. vs. Garr, 24 Am. Rep. 277, and Railway vs. Cleere (Ark.), 88 S. W. 995.

In the Briscoe case, supra, Judge Augustus N. Hand approved an award of $23,000.00 "with interest thereon from the date of the decedent's death to the date of the final decree". In that case the monthly base pay was stipulated to have been $117.00. The life expectancy was shown to have been 39.49 years. In concluding the opinion, Judge Hand has this to say:

"Likewise, the commissioner might take into account the pecuniary value of the nurture of the child and allow for its loss of intellectual, moral, and physical training. Me-

Intyre v. N. Y. Central R. R. Co., 37 N. Y. 287; Tilley v. Hudson R. R. R. Co., 24 N. Y. 471; Id., 29 N. Y. 252, 86 Am. Dec. 297; Mich. Cent. R. R. v. Vreeland, 227 U. S. at page 73, 33 S. Ct. 192, 57 L. Ed. 417, Ann. Cas. 1914C, 176. This amount, too, is indefinite and cannot be arrived at by calculation, but may none the less be properly considered. Apparently the wife is also entitled to recover funeral expenses. Murphy v. New York Central & H. R. R. Co., 88 N. Y. 445; Rebmann v. Del., L. & W. R. Co. (D. C.), 275 F. 1009; Steenberg v. Lewis, 221 App. Dig. 808, 223 N. Y. S. 444."

[fols. 348-351] The Ryan-Draper case was before the Circuit Court of Appeals at New Orleans for review of Judge Hutcheson's decision in the District Court. No reference is made to the amount of damages in the report of the case when it was affirmed by the U. S. Circuit Court of Appeals; but I have been supplied with the printed transcript of the record, from which it appears that Judge Hutcheson allowed to the widow and children of Albert J. Draper $10,000.00, upon a showing that he was thiry-five years of age and earning around $100.00 per month.

But these awards of appellate and trial Courts are no more than persuasive and each case must necessarily stand upon its own facts. Entertaining these views and giving due allowance for the arguments of both claimants and Petitioner, I have endeavored to fix a reasonable and fair award to each of the several claimants as set out below. In making allowances for the children, I have taken into consideration this one other circumstance, viz: where the income of one family was shown to be appreciably larger than that of another family, I regarded the loss to the child as distinctly larger than it would have been for a child whose parent was earning much less wages; because it is only reasonable to expect the child of a parent earning the larger income will receive more advantages in a material and educational way.

* * * * * * *

[fol. 352] 8. It was agreed by counsel that Edward Van Beeck at the time of his death was unmarried, and that he left surviving him his mother, Mrs. Jennie Royackers, and several brothers, and that at the time of his death he was

contributing to the support of his mother from $30.00 to $50.00 per month. It was further agreed that his mother died on July 31st, 1931, and that at the time of her death she was fifty-eight years of age. The pecuniary loss is limited to the duration and extent of the lifetime of the mother. (Snider vs. G. E. Co. (N. Y.), 34 A. L. R. 158). [fols. 353-359] The award in this case is fixed at $700.00.

Respectfully submitted, Samuel C. Lipscomb, Commissioner.

[File endorsement omitted.]

[fols. 360-379] In United States District Court

Claimant's Exceptions and Objections to Report of Commissioner—Filed March 4, 1935

* * * * * * *

[fol. 380] (8) Mrs. Jennie Royackers (In this case it was agreed that Mrs. Royackers, the mother, was receiving from her son a sum from $30.00 to $50.00 per month and that she died July, 1931, and if this be calculated for eighteen months at $40.00 it produces the sum of $720.00 [fols. 381-388] as against the $700.00 awarded by the commissioner.

* * * * * * *

[fol. 389] [File endorsement omitted.]

[fol. 390] In United States District Court

Suggestions of the Death of Mrs. Jennie Royackers, Administratrix, and Order of Substitution—Filed July 18, 1935

Come now the Proctors for Mrs. Jennie Royackers administratrix of the estate of Edward C. Van Beeck and suggest to the Court the death of Mrs. Jennie Royackers after her appointment as administratrix of the said estate, and show to the Court that in the place and stead of the said

Mrs. Jennie Royackers Charles Van Beeck was heretofore appointed administrator of the estate of Edward C. Van Beeck, deceased, by the County Court of Jefferson County, Texas, during the month of June, 1935, and that the said Charles Van Beeck is now the duly qualified and acting administrator of said estate and is duly authorized to prosecute this cause of action herein as fully as if originally appointed herein, and said administrator prays that the Court enter an order substituting him as such administrator with full power and authority to act herein.

Howth, Adams & Hart, Lockhart, Hughes & Lockhart, Proctors for said Claimant.

The foregoing application having been duly considered, it is ordered that Charles Van Beeck, administrator, be and he is hereby substituted herein in lieu of Mrs. Jennie Royackers, administratrix of the estate of Edward C. Van Beeck, and that he be and he is hereby invested with full powers and authority to act herein.

(Signed) Randolph Bryant, Judge.

[fols. 391-394] In United States District Court Eastern District of Texas, at Beaumont

No. 334. In Admiralty

In the Matter of the Petition of Sabine Towing Company for Limitation of Liability

Findings of Fact and Conclusions of Law—Filed July 18, 1935

Upon a careful consideration of all the facts introduced upon the question of damages before the Commissioner, Honorable Samuel C. Lipscomb, and after the full consideration of the report of the said commissioner heretofore filed herein, I overrule all exceptions to said report, and adopt the Findings of the said Commissioner, as my Findings, and herewith file the following Findings of Fact and Conclusions of Law.

Findings of Fact

* * * * * * *

[fol. 395] 8. It was agreed by counsel that Edward Van Beeck at the time of his death was unmarried, and that he

left surviving him his mother, Mrs. Jennie Royackers, and several brothers, and that at the time of his death he was contributing to the support of his mother from $30.00 to $50.00 per month. It was further agreed that his mother died on July 31, 1931, and that at the time of her death she was fifty eight years of age.

CONCLUSIONS OF LAW

I conclude as a matter of law that the personal representatives of Joseph H. Kenney, William Brennen, O. G. Pyle, H. A. Anderson, C. Durio, C. L. Nelson, Stewart Causey and Edward Van Beeck be and they are entitled to recover the damages hereinabove found with interest thereon at 6% [fol. 396] from the date of the filing of the Commissioner's report.

(Sgd.) Randolph Bryant, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

No. 334 A. D.

In the Matter of the Petition of the SABINE TOWING COMPANY, INC., Owner of the Tug "Edgar F. Coney" Praying for Exoneration of or Limitation of Liability

FINAL DECREE—Filed July 18, 1935

Whereas, on July 13th, 1933, an interlocutory decree was filed herein, wherein it was decreed, that the claimants were entitled to recover such damages as have arisen to the beneficiaries of William Brennan, Orville Glenn Pyle, Cyrus Durio, Stewart Causey, Joseph Hyden Kenney, C. L. Nelson, H. A. Anderson, and Edward C. Van Beeck, all deceased, and

Whereas, a Commissioner, Samuel C. Lipscomb, Esq., was appointed to assess the damages arising by reason of the death of the aforementioned parties, and to report same to the Court with all convenient speed, and

Whereas, on the 28th day of February, 1935, the said Commissioner made his final report, and exceptions having

been lodged thereto by both parties, and the Court having heard the said exceptions and the arguments in support of same, is of the opinion, that the amount of damages arising [fol. 397] by reason of the negligence of the petitioner upon each claim filed is as follows:

To Mrs. Sophia Brennan, administratrix of the estate of William Brennan, $21,000.00, apportioned as follows: to Mrs. Sophia Brennan $15,000.00; to Audrey Brennan $1500.00; to William Brennan Jr., $2000.00; to Gloria Jean Brennan $2500.00.

To Mrs. Bertha M. Pyle, administratrix of the estate of Orville Glenn Pyle, $20,000.00, for the sole use and benefit of Mrs. Bertha M. Pyle.

To Mrs. Adolphine Durio, administratrix of the estate of Cyrus Durio, $9,000.00, apportioned as follows, to Adolphine Durio, $7,300.00, to Mildred Durio, $400.00, to Earline Durio $500.00, to Joseph Durio $800.00.

To R. J. Causey, administrator of the estate of Stewart Causey $3000.00, apportioned as follows: to R. J. Causey $1500.00, to Mrs. Myrtis Causey $1500.00.

To Mrs. Ora Kenney, administratrix of the estate of Joseph Hyden Kenney $20,000.00, apportioned as follows: to Mrs. Ora Kenney $15,300.00, to Joseph Hyden Kenney Jr., $2000.00, to Kathleen Kenney, $2,700.00.

To W. M. Crook, administrator of the estate of C. L. Nelson $7500.00, for the sole use and benefit of Ruth Nelson, now Ruth Nelson Dumas.

To Ruth Anderson, administratrix of the estate of H. A. Anderson, $11,000.00, for the sole use and benefit of Ruth Anderson.

To Charles Van Beeck Administrator of the estate of Edward C. Van Beeck $700.00, same being the amount of [fol. 398] damages accruing to Mrs. Jennie Royackers up to the time of her death, for the sole use and benefit of the ——, heirs at law of Mrs. Jennie Royackers, now deceased.

It is therefore Ordered, Adjudged And Decreed by the Court in pursuance to the interlocutory decree heretofore rendered that the petition of the Sabine Towing Company, Inc., for exoneration and/or limitation of liability be and the same is hereby denied, and the Claimants Sophia Brennan, administratrix of the estate of William Brennan, Bertha M. Pyle, administratrix of the estate of Orville Glenn Pyle; Mrs. Adolphine Durio, administratrix of the estate of

Cyrus Durio; R. J. Causey, administrator of the estate of Stewart Causey; Mrs. Ora Kenney, administratrix of the estate of Joseph Hyden Kenney; W. M. Crook, administrator of the estate of C. L. Nelson; Ruth Anderson, administratrix of the estate of H. A. Anderson; and Charles Van Beeck administrator of the estate of Edward C. Van Beeck, do have and recover of and from the Sabine Towing Company, a corporation, the sum of $92,200.00, to be apportioned as hereinabove set forth, to-wit;

To Sophia Brennan, administratrix, of the estate of William Brennan, $21,000.00, apportioned as follows: to Mrs. Sophia Brennan $15,000.00; to Audrey Brennan $1500.00; to William Brennan Jr. $2000.00; to Gloria Jean Brennan $2500.00.

To Mrs. Bertha Pyle, administratrix of the estate of Orville Glenn Pyle, $20,000.00; for the sole use and benefit of Mrs. Bertha M. Pyle.

To Mrs. Adolphine Durio, administratrix of the estate of Cyrus Durio, $9,000.00, apportioned as follows, to Adolphine [fol. 399] Durio, $7,300.00, to Mildred Durio, $400.00, to Earline Durio $500.00, to Joseph Durio $800.00.

To R. J. Causey, administrator of the estate of Stewart Causey $3000.00, apportioned as follows: to R. J. Causey $1500.00, to Mrs. Myrtis Causey $1500.00.

To Mrs. Ora Kenney, administratrix of the estate of Joseph Hyden Kenney $20,000.00, apportioned as follows: to Mrs. Ora Kenney $15,300.00, to Joseph Hyden Kenney Jr., $2000.00, to Kathleen Kenney, $2,700.00.

To W. M. Crook, administrator of the estate of C. L. Nelson $7500.00, for the sole use and benefit of Ruth Nelson, now Ruth Nelson Dumas.

To Ruth Anderson, administratrix of the estate of H. A. Anderson, $11,000.00, for the sole use and benefit of Ruth Anderson.

And whereas, on the 18th day of March, 1932, a bond in the sum of $140,000.00 was filed in this cause pursuant to an order in the case of Mrs. Sophia Brennan et al. vs. Sabine Transportation Company, Inc., and Sabine Towing Company, Inc., No. 476 in Equity, said bond conditioned that Sabine Towing Company, Inc. and Sabine Transportation Company, Inc., should abide by and perform any decree and pay any final judgment rendered in this Court, and on

appeal by an Appellate Court, that might be rendered against them, or either of them in this cause; said Sabine Towing Company, Inc., and Sabine Transportation Company, Inc., being principals upon said bond, and M. T. Ball, L. L. Abshire, R. P. Smith, A. S. Hansen and H. M. Fredrickson being sureties on same.

[fol. 400] It is therefore, Ordered, Adjudged And Decreed by the Court that the Claimants above named in pursuance to the terms of said bond do have and recover of and from the said Sabine Towing Company, Inc., and Sabine Transportation Company, Inc., as principals, and M. T. Ball, L. L. Abshire, R. P. Smith, A. S. Hansen and H. M. Fredrickson, as sureties, in the amount and in the proportion hereinabove set forth, and with interest as provided herein, for all of which execution may issue in the event that execution has been theretofore issued and returned unsatisfied against the Sabine Towing Company, Inc.

And whereas, in connection with the filing of the petition herein, the Sabine Towing Company, Inc., executed and filed its bond with the American Surety Company of New York as Surety thereon, in the sum of $620.00 representing the pending freight on the voyage on which the Edgar F. Coney was lost, and by reason of the judgment herein liability has accrued on said bond.

It is therefore Ordered, Adjudged And Decreed, that execution issue against the American Surety Company of New York for an amount not exceeding the sum of $620.00 in the event that execution against the Sabine Towing Company, Inc. has been returned unsatisfied.

It appearing that petitioner has agreed that the sum of $1500.00 is a proper allowance to the Commissioner, it is further ordered that Samuel C. Lipscomb be and he is hereby allowed a fee of Fifteen Hundred Dollars for his services as Commissioner herein to be taxed against the Petitioner as costs in this case; and the Commissioner shall be entitled to an attachment against Petitioner for the amount allowed as his fee if the same shall not be paid within ten days after entry hereof.

(Signed) Randolph Bryant, Judge.

[File endorsement omitted.]

[fol. 401] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed July 26, 1935

The petition of the Sabine Towing Company, Inc., owner of the tug, Edgar F. Coney, before and at the time of her loss in the Gulf of Mexico, herein referred to, and the Sabine Transportation Company, Inc., as Principal, and M. T. Ball, L. L. Abshire, R. P. Smith, A. S. Hansen, and H. M. Fredrickson as individual sureties on a certain bond filed herein on March 18, 1932, under order of Court, in the sum of $140,000, and the American Surety Company of New York, surety on the stipulation filed herein, in the sum of $620, representing the pending freight on said voyage:

Respectfully represents:

That they are aggrieved by the final judgment and decree herein rendered and signed on the 17th day of July 1935, awarding damages against Petitioners, and in favor of claimants, and apportioned as in said final decree provided. That there are errors therein that are to the manifest prejudice and injury of Petitioners, and that petition for the reasons specified in the Assignments of Error filed herewith which are hereby made a part hereof, and for purpose of identification herewith, are hereby marked Assignments of Errors, desire to appeal from said final judgment and decree, and desire that said appeal returnable to the United States Circuit Court of Appeals for the Fifth Circuit, shall operate as a supersedeas and may suspend during the pendency of said appeal the effect of said final decree.

Wherefore, Petitioners pray that an ppeal may be allowed upon such terms as the Court shall deem just, and [fol. 402] that said appeal may operate as a supersedeas and may suspend during the pendency of said appeal the effect of said final judgment and decree; that said appeal be made returnable to the Unitel States Circuit Court of Appeals, for the Fifth Circuit, according to law, and due notice of this appeal and citation be served on Mrs. Sophia Brennan, Mrs. Bertha M. Pyle, Mrs. Adolphine Durio, R. J. Causey, Ora Kenney, Ruth Anderson and Wm. M. Cook, Claimants and appellees herein, by service on their proctors of record, and that a transcript of record, proceedings, papers and exhibits filed in this cause in evidence upon which the final decree on question of damages was ren-

dered, duly authenticated, be sent to the United States Circuit Court of Appeals, and Petitioners pray for all general and equitable relief.

(Sgd.) John D., M. A. & Edwin H. Grace, Proctors for Petitioners.

ORDER ALLOWING APPEAL

Let an appeal be granted the above named Petitioners to operate as a supersedeas and to suspend the operation of said final decree during the pendency of this appeal, upon Petitioners' furnishing bond in the sum of $3,000.00, said appeal to be returnable to the United States Circuit Court of Appeals, for the Fifth Circuit, according to law, and that citation issue as herein prayed for.

(Signed) T. M. Kennerly, Judge.

Houston, Texas, July 25, 1935.

[fol. 403] ASSIGNMENT OF ERRORS TO THE FOREGOING PETITION

First

That the Court erred in affirming the Commissioners' Report and in awarding to Mrs. Sophia Brennan, administratrix of the Estate of Wm. Brennan, a total sum of $21,000, and in apportioning said sum as follows:

To Mrs. Sophia Brennan	$15,000
To Audrey Brennan	1,500
To Wm. Brennan, Jr.	2,000
To Gloria Jean Brennan	2,500

because the said amount is excessive and should have been reduced; that the Court erred in rendering judgment in favor of Mrs. Sophia Brennan as Administratrix and in apportioning said award as hereinabove set out, because the said amount is excessive, as shown by the law and the evidence.

Second

The Court erred in affirming the Commissioner's Report and in awarding to Mrs. Bertha M. Pyle, Administratrix

of the Estate of Orville Glenn Pyle, a total sum of $20,000, for the sole use and benefit of Mrs. Bertha M. Pyle, because the said amount is excessive and should have been reduced; that the Court erred in rendering judgment in favor of Mrs. Bertha M. Pyle as Administratrix in the sum of $20,000, because the said amount is excessive, as shown by the law and the evidence.

Third

The Court erred in affirming the Commissioners' Report [fol. 404] and in awarding to Mrs. Adolphine Durio, Administratrix of the Estate of Cyrus Durio, the total sum of $9,000, and in apportioning said sum as follows:

To Adolphine Durio	$7,300
To Mildred Durio	400
To Earline Durio	500
To Joseph Durio	800

because the said amount is excessive and should have been reduced. That the Court erred in rendering judgment in favor of Mrs. Adolphine Durio as Administratrix and in apportioning said award as hereinabove set out, because the said amount is excessive, as shown by the law and the evidence.

Fourth

That the Court erred in affirming the Commissioners' Report and in awarding to R. J. Causey, Administrator of the Estate of Stewart Causey, the total sum of $3,000, and in apportioning said sum as follows:

To R. J. Causey	$1,500
To Mrs. Myrtis Causey	1,500

because the said amount is excessive and should have been reduced. That the Court erred in rendering judgment in favor of R. J. Causey as Administrator and in apportioning said award as hereinabove set out, because the said amount is excessive, as shown by the law and the evidence.

Fifth

That the Court erred in affirming the Commissioners' Report and in awarding to Mrs. Ora Kenney, Administra-

[fol. 405] trix of the Estate of Joseph Hayden Kenney, a total sum of $20,000, and in apportioning said sum as follows:

To Mrs. Joseph Hayden Kenney	$15,300
To Joseph Hayden Kenney, Jr.	2,000
To Kathleen Kenney	2,700

because the said amount is excessive and should have been reduced. That the Court erred in rendering judgment in favor of Mrs. Ora Kenney as Administratrix and in apportioning said award as hereinabove set out, because the said amount is excessive, as shown by the law and the evidence.

Sixth

The Court erred in affirming the Commissioners' Report and in awarding to Wm. Crook, Administrator of the Estate of C. L. Nelson, the sum of $7500, for the sole use and benefit of Ruth Nelson, now Ruth Nelson Dumas, because the said amount is excessive and should have been reduced. That the Court erred in rendering judgment in favor of Wm. Crooks, Administrator, for the sole use and benefit of Ruth Nelson, now Ruth Nelson Dumas, because the said amount is excessive and should have been reduced. That the Court erred in rendering judgment in favor of Wm. Crooks, Administrator, for the sole use and benefit of Ruth Nelson, now Rulth Nelson Dumas, because the said amount is excessive, as shown by the law and the evidence.

Seventh

That the Court erred in affirming the Commissioners' Report and in awarding to Ruth Anderson, Administratrix of the Estate of H. A. Anderson, the sum of $11,000 for the [fols. 406-430] sole use and benefit of Ruth Anderson, because the said amount is excessive and should have been reduced. The Court erred in rendering judgment in favor of Mrs. Ruth Anderson, Administratrix, for the sole use and benefit of Auth Anderson, the sum of $11,000, because the said amount is excessive, as shown by the law and the evidence.

Eighth

The Court erred in referring to annuity tables, which were not applicable to lives of seamen, and further erred

in its determination of the average monthly earnings of decedents herein.

Ninth

That the decree of the Lower Court is contrary to the law and the evidence.

Tenth

The Court erred in allowing interest on damages from date of the Commissioners' Report.

(Sgd.) John D., M. A. & Edwin H. Grace, Proctors for Appellant.

July 25, 1935.

[File endorsement omitted.]

[fol. 431] In United States District Court, Eastern District of Texas

No. 7876

Sabine Towing Company et al., Appellants,

vs.

Sophie Brennan et al., Appellees

Petition for Cross Appeal—Filed November 4, 1935

Charles Van Beeck, Administrator of the estate of Edward C. Van Beeck, considering himself in his representative capacity as aforesaid, aggrieved by the final judgment entered in this cause on or about the 18th day of July, 1935, wherein he was denied any recovery against the Sabine Towing Company, Inc., the Sabine Transportation Company, Inc., M. T. Ball, L. L. Abshire, R. P. Smith, A. S. Hansen, H. M. Frederickson, and the American Surety Company of New York; and the said Charles Van Beeck as such administrator hereby appeals from said decision [fol. 432] to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, and files herein his cross assignment of errors as required by law, and thereupon prays that his said appeal be allowed, and that the necessary

transcript of the record upon which said final judgment was based may be sent up duly authenticated to the said United States Circuit Court of Appeals for the Fifth Circuit, and that citation in due form be issued citing the libelants to appear and answer to said cross appeal.

Charles Van Beeck, as Administrator of the Estate of Edward C. Van Beeck, by Howth, Adams & Hart, by M. G. Adams; Lockhart, Hughes & Lockhart, His Proctors.

Cross Assignment of Errors Referred to in the Foregoing Petition

Cross Assignment of Error No. 1:

The court erred in holding that as a matter of law Charles Van Beeck, administrator of the estate of Edward C. Van Beeck, was not entitled to recover the amount of damages as found by the Commissioner or any part thereof.

Cross Assignment of Error No. 2:

The court erred in failing and refusing to confirm the findings of the Commissioner in the sum of Seven Hundred [fols. 433-442] ($700.00) Dollars, which said sum represented the pecuniary loss of Mrs. Jennie Royakers up to the time of her death, and erred in refusing to award interest on said sum from the date of the Commissioner's report.

Howth, Adams & Hart, by M. G. Adams, Lockhart, Hughes & Lockhart, Proctors for Charles Van Beeck, Administrator of the Estate of Edward C. Van Beeck.

Order Allowing Appeal

Upon the foregoing petition for cross appeal and upon reading and ordering filed the accompanying cross assignments of error, the above appeal is allowed upon the petitioner furnishing good and sufficient bond on appeal in the sum of $250.00, said appeal to be returnable to the United States Circuit Court of Appeals for the Fifth Circuit Court according to law.

Dated October 15th, 1935.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

[fols. 428-443] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 7th, 1936

No. 7876

SABINE TOWING COMPANY, INC., et al.,

versus

SOPHIA BRENNAN et al.

On this day this cause was called, and, after argument by M. A. Grace, Esq., for appellants, and H. C. Hughes, Esq., and M. G. Adams, Esq., for appellees, was submitted to the Court.

[fol. 444] ARGUMENT AND SUBMISSION

Extract from the Minutes of January 7th, 1936

No. 7977

CHARLES VAN BEECK, Administrator of the Estate of Edward C. Van Beeck,

versus

SABINE TOWING COMPANY, INC., et al.

On this day this cause was called, and, after argument by H. C. Hughes, Esq., and M. G. Adams, Esq., for cross-appellant, and M. A. Grace, Esq., for cross-appellees, was submitted to the Court.

[fol. 445] OPINION OF THE COURT—Filed August 14th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7876

SABINE TOWING COMPANY, INC., et al., Appellants,

versus

SOPHIA BRENNAN et al., Appellees

and

No. 7977

CHARLES VAN BEECK, Administrator of the Estate of Edward C. Van Beeck, Cross-Appellant,

versus

SABINE TOWING COMPANY, INC., et al., Cross-Appellees

Appeal and Cross-Appeal from the District Court of the United States for the Eastern District of Texas

(August 14, 1936)

Before Foster, Sibley and Walker, Circuit Judges

FOSTER, Circuit Judge:

These cases present an appeal and cross appeal in admiralty from a judgment awarding damages for the death [fol. 446] of certain members of the crew of the tugboat Edward F. Coney, owned by appellant, Sabine Towing Co., Inc., hereafter called the company, which vessel foundered in the Gulf of Mexico on January 28, 1930, with the loss of her entire crew of 14. The company filed a petition for limitation of liability which was denied, on the ground that the vessel was lost because unseaworthy, to the knowledge of her owners (72 F. (2d) 490). Claims were filed in that proceeding by personal representatives of eight members of the crew, hereafter called claimants, and were referred to a commissioner to take the evidence and recommend the amounts to be recovered. In due course the commissioner

reported. Exceptions to the report were filed by the company, on the ground that the awards were too high. The claimants also excepted to the report on the ground that the awards were too low. All exceptions to the commissioner's report were overruled and the amounts he recommended were adopted by the court, except as to one claim which was disallowed. Judgment was entered accordingly.

So far as he discussed it, the commissioner correctly interpreted the law. He reviewed the evidence to some extent in making his report but did not specifically find the facts as to any claim. It is not clearly shown what formula he used in determining the amounts to be awarded.

The law is well settled. The claimants are entitled to recover in admiralty, under the provisions of section 33 of the Merchant Marine Act of June 5, 1920 (T. 46 U. S. C. A. § 688), which incorporates the provisions of the Federal Employers' Liability Act (T. 45 U. S. C. A. secs. 51, et seq.) by reference. Lindgren vs. U. S., 281 U. S. 38. There may be only one recovery by the personal representative of the deceased for the benefit of all the persons entitled to damages under the act. The measure of damages is compensation for the deprivation of the reasonable expectation of [fol. 447] pecuniary benefits that would have resulted from the continued life of the deceased. In estimating this the earning power of money must be considered and an amount determined, which, capitalized at a reasonable rate of interest, would yield annually the same income the person injured might have expected from the deceased, using the interest and part of the capital from year to year. To determine this amount standard tables prepared by actuaries may be used. Chesapeake & Ohio Ry. vs. Kelly, 241 U. S. 485.

Pecuniary loss to be recovered may include damages, "when the beneficiary is a child, for the loss of that care, counsel, training and education which it might, under the evidence, have reasonably received from the parent, and which can only be supplied by the service of another for compensation." Michigan Central R. R. vs. Vreeland, 227 U. S. 59-71.

There are certain features common to all the claims. Claimants offered an insurance actuary as a witness. He testified as to the joint expectation of life of the deceased and beneficiary. Since there is no evidence in the record

to the contrary, we must accept that testimony as part of a reasonable basis for the determination of the amount to be awarded in each case. The actuary also testified as to the present value of money capitalized at 3½ and 4% per annum interest. On this testimony claimants contend that they should have been awarded damages on the present value of the amount of annual income lost for the joint expectancy of life, capitalized at 3½%.

Six claims were presented for the benefit of the widows of the deceased seamen. Every widow testified, in substance, that her husband was strong and healthy, sober and industrious and devoted to his wife and family; that he turned over his entire wages to her every month and used [fol. 448] not over $10 to $15 per month for his personal expenses. However, it also appears that the wives paid all the bills for the support of the family and, in some instances, instalments on articles bought on time. Three of these claims were also for the benefit of minor children. There is nothing in the evidence, except the general statement of the widow that the father was devoted to his children and gave them his care and affection when at home, to show the pecuniary value of his services to the children or that another would of necessity have to be employed to furnish the same care.

We must endeavor to do justice between the parties, the company as well as the claimants. There is no mathematical formula for exactly determining the loss. Any amount fixed is of necessity hypothetical. We may not consider what might happen in the future. The earnings of the deceased might have increased or diminished had they lived. Some beneficiaries might squander their recovery in a year or two. Others might preserve it intact for many years, using only the annual interest or by successful business ventures double it. All this is too speculative to have a place in determining the award.

The legal rate of interest in Texas is 10% per annum. Doubtless many well secured loans are made at that rate: United States bonds as a rule do not pay more than 3%, but there are many state bonds and sound industrial securities that pay at least 6% per annum interest. Courts are not bound to adopt either the highest or the lowest rate of interest in determining the amount to be awarded. In Ramjak vs. Austro-American S. S. Co., 186 Fed. 417, we

adopted the rate of 6% per annum as reasonable in determining the decreased earning capacity of a passenger injured on a vessel. In U. S. vs. Boykin, 49 F. (2d) 762, we [fol. 449] again adopted the rate of 6% per annum in awarding damages to a father for the death of his son. We consider that rate just and reasonable.

Assuming the testimony of the widows to be truthful, it is beyond dispute that the husbands, upright, faithful and devoted, derived as much benefit from the upkeep and happiness of the family as did the wives. We consider it to be a fair estimate to say the family had lost an amount equivalent to one-half of what the husband and father earned.

We may take up the various awards in the order in which they appear in the judgment, allowing recoveries in round figures to conform as near as they may to a fair estimate of the damages suffered.

William Brennan was master of the tug. His wages were $200.00 per month at the time of his death. His average earnings for thirteen months had been $161.58 per month. A claim was filed for the benefit of his widow, Sophie Brennan, and three minor children, Audrey, aged 8, William aged 6 and Gloria, aged 3. Judgment was rendered for $21,000.00, in proportions of $15,000.00 to the widow, $1,500.00 to Audrey, $2,000.00 to William and $2,500.00 to Gloria. Fixing the loss to the widow and children at $1,200.00 per annum, an amount of $15,250.00, capitalized at 6% for the life expectancy, which was 24 years, would fully cover the loss. The statute does not require that the court should apportion the recovery among the beneficiaries, Central Vermont Railway vs. White, 238 U. S. 507, but it is usually done. Where there are a number of beneficiaries in the class entitled to recover, and the evidence discloses that their expectancies are different, it is proper to do so. In the case of a recovery for the benefit of a widow and her minor children there is hardly any need to apportion the amount between them. Naturally, the minor children will [fol. 450] receive full benefit from any award made to the mother. However, the District Court has seen fit to do so in this case. Appellant has no interest as to this and appellee has made no objection. We do not consider that any distinction should be made between the children because of the difference in their ages. The amount apportioned to them will probably be administered by the mother, as guardian

or trustee. The only practical result of the apportionment would be to have the amount set aside to them, to be available when they reach majority. We consider that the apportionment of $1,000.00 to each of the children would be proper. This will be sufficient to include any theoretical pecuniary recovery for the loss of the father's care and guidance.

Orville Glenn Pyle was chief engineer of the tug. His wages were $190.00 per month at the time of his death. For 13 months his earnings had averaged $182.31 per month. A claim was filed for the benefit of his widow, Bertha M. Pyle. There were no children, issue of the marriage. Judgment was rendered for $20,000.00. The life expectancy was 25 years. Whether there be one or many of the class entitled to recover is not material. Fixing her loss at $1,140.00 annually, she is entitled to an award of $14,750.00.

Cyrus Durio was steward and cook on the tug. His wages were $85.00 per month. His average for 13 months was $86.95. A claim was filed for the benefit of his widow, Mrs. Adolphine Durio, and three minor children, Mildred, aged 16, Earline, aged 13 and Joseph, aged 9. Judgment was rendered for $9,000.00 in proportions of $7,300.00 to the widow, $400.00 to Mildred, $500.00 to Earline and $800.00 to Joseph. The life expectancy was 15 years. Fixing the loss at $510.00 annually $5,250.00 would be an ample recovery on this claim. Considering the advanced ages of the children, it should be apportioned $3,750.00 to the widow and $500.00 to each of the children.

[fol. 451] Stewart J. Causey was classed as a sailor on the tug. His wages were $65.00 per month at the time of his death. For 12 months his earnings had averaged $57.68 per month. He left as beneficiaries his father and mother. A claim was filed for their benefit and judgment was rendered for $3,000.00, proportioned $1,500.00 to each. The father testified that his son was 19½ years of age at the time of his death. The parents lived in Amite County, Mississippi, and owned a farm of 172 acres, of which they cultivated 14 acres and rented 14 acres. The son had been living at Port Arthur, Texas, with his sister and her husband and had gone to school there. It is not shown how long he had been away from home but it is reasonably certain that he had been away for several years. His father testified that his son regularly sent him $20.00 a month, and

sometimes would make it $25.00, but there is nothing to show this but his own testimony. He introduced two letters from his son. In one, dated October 29, 1929, about three months before his death, he apologized for not writing, told about a trip he had taken to New Orleans, Jacksonville and Miami, complained about the cost of living and said he could not save anything but was going to send his father and mother $20.00 and would send them another $25.00 for Christmas and that was the best he could do. In the other letter, dated January 25, 1930, a few days before his death, he again apologized for not having written before, said he was going to make a trip to Pensacola and Tampa and would not be back for some time but he would write them. He made no mention in this letter of having complied with his previous promise or about making any further contributions. The testimony of the father that his son sent him from $20.00 to $25.00 a month has little probative weight. Living away from home, paying all his own expenses and earning only $65.00 a month, it was highly improbable that he could have managed to send his father and mother as [fol. 452] much as $20.00 a month. It is apparent that the father and mother had very little expectation of pecuniary benefit from their son. They were not entitled to recover for his services during minority. N. Y. Central & Hudson River R. R. vs. Tonsellito, 244 U. S. 360. To fix their estimated loss at $100.00 a year would be extremely liberal. The joint expectancy of life was 15 years. An award of $1,000.00, to be divided equally between them, would be ample on this claim.

Joseph Hayden Kenney was mate of the tug. His wages were $165.00 per month at the time of his death and he averaged $168.27 over a period of 13 months. A claim was filed for the benefit of his widow, Ora Kenney and two minor children, Joseph, aged 10, and Kathleen, aged 6. Judgment was rendered for $20,000.00, proportioned $15,300.00 to herself, $2,000.00 to Joseph and $2,700.00 to Kathleen. The life expectancy was 22 years. Fixing the annual loss at $990.00 an award of $12,250.00, proportioned $10,250.00 to the mother and $1,000.00 to each of the children would be ample.

C. L. Nelson was on the tug when she was lost and should be rated as a fireman. There is some question as to whether his name was Charles or Cyrus but that is immaterial as

the recovery is by his personal representative. W. M. Crook presented a claim as administrator and was awarded $7,500.00 for the benefit of Ruth Nelson, now Ruth Nelson Dumas, his widow, who remarried about a year and a half after his death and was subsequently divorced. There is testimony, slight it is true, but admitted without objection and uncontradicted, that he was signed on by the captain of the tug shortly before she departed on her last voyage and he was working his way to Tampa. The tug's papers were all lost with her. The only item shown on the books of the company is that he earned $12.50 in January, which [fol. 453] was due him at the time of his death. The usual rate of pay for firemen on tugs is $65.00 per month. There were no children, issue of the marriage. The widow testified by deposition that her husband sent her $50.00 a month regularly. She had been living at Salem, Massachusetts, since 1926, some four years before the husband lost his life. They were not divorced but he was working in Florida and visited her only occasionally when he could get on a ship that would take him to that part of the country. The widow was earning from $12.00 to $15.00 per week, practically as much as the husband when he was steadily employed. Claimant introduced several letters the widow had received from her husband. None of the letters mentioned the sending of money but one of them promised that he would do so. From the tone of the letters it may be inferred that he intended to send her whatever he could spare when he was earning anything. The burden was on claimant to prove the decedent's employment on the vessel, the rate of wages he received and the beneficiary's reasonable expectancy of future income. There is nothing to show that Nelson had any income other than his pay. The testimony of the widow that her husband regularly sent her $50.00 a month is entitled to no weight as that would leave him only $15.00 per month, if he were employed, to cover his entire expenses, and he must have known she was supporting herself. It is doubtful that claimant has sustained the burden of proving any loss. However, as the commissioner and the District Court were convinced, we will not take a contrary position. Considering all the testimony it can not be said that the beneficiary lost an expectancy of income of more than $20.00 a month. The life expectancy

was 22 years. An award of $3,000.00 would be ample on this claim.

H. A. Anderson was a fireman on the tug. His pay was $65.00 a month at the time of his death. He had averaged [fol. 454] that for a period of 5 months. A claim was filed for the benefit of his widow, Ruth Anderson. There were no children, issue of the marriage. Judgment was rendered for $11,000.00 for her sole use. The widow frankly testified that she did not know how much her husband used for his own expenses or how much he earned; that he regularly gave her $37.50 every two weeks while they were married, which was a period of one year and 28 days. It is not shown that he had any source of income other than his pay. It was manifestly impossible for him to have given his wife $75.00 a month, to say nothing of paying his own personal expenses. The life expectancy was 20 years. Fixing the annual loss of income at $390.00 an award of $4,750.00 would be ample.

The cross appeal is taken to the rejection of a claim filed by Mrs. Jennie Royakers as administratrix to recover damages for the death of her son, Edward C. Van Beck, who was second mate on the Coney. It appears from a stipulation in the record that Edward C. Van Beck left surviving him his mother and a brother aged 34.. After filing the claim his mother died in July, 1931, before an award had been recommended by the commissioner. The brother, Charles Van Beck, qualified as administrator of the estate of his brother and was substituted in place of his mother, the former administrator. Cross appellant contends that judgment should have been granted for the amount recommended by the commissioner, $700.00.

The statute (T. 45 U. S. C. A. §51) creates three classes of beneficiaries, (1) the surviving widow or husband and children of the employee, (2) the employee's parents and (3) the dependent next of kin of the employee. Each class excludes those following, in the order named, and non-dependent collaterals are not entitled to recover. Before the passage of the Merchant Marine Act there could be no re- [fol. 455] covery for damages for the death of a sailor occurring on the high seas. Nor could there be any recovery for death of a common law. In Martin's Administrator vs. Blto. & Ohio R. R., 151 U. S. 673-703, an action was brought by Martin to recover damages for personal

injuries to himself. A verdict was directed for defendant. Pending an appeal, Martin died and his administrator was substituted. On suggestion of his death, in the Supreme Court, it was held that the action abated by the death of the injured party, under the law of Virginia, where the action was brought, and that the administrator had no right to maintain the action. In Chicago, Burlington & Quincy R. R. Co. vs. Wells-Dickey Trust Co., 275 U. S. 161, it was held that the liability is to one of the three classes named in the act and not to the several classes collectively; and if the person entitled to recover at the time of the employee's death dies before a recovery of the compensation, the cause of action dies also.

There is no doubt that the cause of action abated with the death of the mother, who at the time of her son's death was the sole beneficiary entitled to recover, to the exclusion of all others. It is clear there could be no recovery on this claim.

The judgment awarded interest to the claimant at the rate of 6% per annum from February 28, 1935, the date of the filing of the commissioner's report. The report merely recommended the amounts to be awarded and did not fix the liability of the company. The act does not provide for interest before the damages are determined. Cortes vs. Baltimore Insular Line, 66 F. (2d) 526. In admiralty the allowance of interest is discretionary with the court. In this case interest should be allowed at the rate of 6% per annum from July 18, 1935, the date the decree was entered in the District Court.

[fol. 456] On the appeal the judgment is amended to conform to our views above expressed. As so amended it is affirmed. Costs in the District Court to follow the judgment. Costs of appeal to be divided; one-half to appellants and one-half to appellees, in proportion to the various amounts of their recoveries.

On the cross appeal the judgment is affirmed.

Judge Walker concurred in the disposition of this case but died before the opinion was handed down.

[fol. 457] JUDGMENT

Extract from the Minutes of August 14th, 1936

No. 7876

SABINE TOWING COMPANY, INC., et al.,

versus

SOPHIA BRENNAN et al.,

No. 7977

CHARLES VAN BEECK, Administrator of the Estate of Edward C. Van Beeck,

versus

SABINE TOWING COMPANY, INC., et al.

This cause came on to be heard on the transcripts of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court on the main appeal be, and the same is hereby, amended to conform to the views expressed in the opinion of this Court, and as so amended, that said judgment be, and it is hereby, affirmed; costs in the District Court to follow the judgment, costs of appeal to be divided; one-half to appellants and one-half to appellees, in proportion to the various amounts of their recoveries. It is further ordered, adjudged and decreed that on the cross-appeal the judgment of the said District Court is affirmed;

It is further ordered, adjudged and decreed that on the main appeal the appellants, Sabine Towing Company, Inc., and others, and the surety on the appeal bond herein, Trin-[fol. 458] ity Universal Insurance Company, be condemned, in solido, to pay one-half of the costs of this cause in this Court, and that the appellees, Sophia Brennan, and others, be condemned, in solido, to pay one-half of the costs of this cause in this Court. It is further ordered, adjudged and decreed that on the cross-appeal, the cross-appellant, Charles Van Beeck, Administrator of the estate of Edward

C. Van Beeck, and the surety on the cross-appeal bond herein, Massachusetts Bonding & Ins. Co., be condemned, in solido, to pay the costs of this cause in this Court on said cross-appeal.

[fol. 459] Motion and Order Staying Mandate—Filed August 31, 1936

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 7876

Sabine Towing Company, Inc., et al., Appellants,

versus

Sophia Brennan et al., Appellees

and

No. 7977

Charles Van Beeck, Administrator of the Estate of Edward C. Van Beeck, Cross-Appellant,

versus

Sabine Towing Company, Inc., et al., Cross-Appellees

Motion of Sophia Brennan, et al., appellees and claimants, and Charles Van Beeck, Administrator of the Estate of Edward C. Van Beeck, cross-appellant and claimant, in the above entitled and numbered causes, suggests and shows:

That all of said claimants desire to apply for writs of certiorari from the Supreme Court of the United States, and for this purpose desire to secure an order of Court staying the mandate of this Court for a reasonable time, as provided by law (U. S. C. A., Title 28, Section 350); and that "such reasonable time" within the meaning of said statute and the circumstances of the case, would be and is for a period of sixty days from the date of the entry of final judgment, to-wit: the 14th day of August, 1936.

The said Charles Van Beeck, Administrator of the Estate of Edward C. Van Beeck, cross-appellant and one of the claimants, further shows unto the Court that at the time of [fol. 460] entering the order denying the cross-appeal herein, the District Judge entered the following order:

"In the foregoing petition for cross-appeal and upon reading and ordering filed the accompanying cross-assignments of error, the above appeal is allowed upon the petitioner furnishing good and sufficient bond on appeal in the sum of two hundred and fifty ($250.00) dollars, said appeal to be returnable to the United States Circuit Court of Appeals for the Fifth Circuit, according to law." (Record in 7977, page 4.)

Said cross-appellant, in pursuance of said order, furnished and filed a bond according to law in the sum of two hundred and fifty ($250.00) dollars, same having been duly approved by the District Court. (R. 5.)

Claimants further suggest and show unto the Court that, in the circumstances of these cases, a stay of the mandate for the time as herein requested cannot possibly have the effect of burdening Sabine Towing Company, Inc., the appellant and cross-appellee in said causes, with any damages or additional costs, or of causing any other substantial injury; and that, therefore, there is no good or substantial reason for conditioning the stay of the mandate herein prayed for on the giving of good and sufficient security, or bond.

All of said claimants desire to make an application to the Supreme Court of the United States for writs of certiorari and for this purpose desire an order of Court staying the mandate for a period of sixty (60) days from the date of the entry of final judgment; and they pray that the Court enter such order without requiring of said claimants any security or bond.

M. G. Adams, H. C. Hughes, Proctors for all of the Claimants.

[fol. 461] On consideration of the application of the said claimants, appellees and cross-appellant, in the above numbered and entitled causes, for a stay of a mandate to this Court, enabling the said claimants to apply for and obtain writs of certiorari from the Supreme Court of the United

States, it is ordered that the issuance of the mandate of this Court in the said causes be and the same is stayed for a period of sixty (60) days from the date of the entry of the final judgment herein, to-wit: sixty (60) days from the 14th day of August, 1936; the said stay to continue in force until the final disposition of the cases by the Supreme Court, provided that within the sixty-day stay period herein allowed, there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof, in accordance with the existing rules of the Supreme Court of the United States, has been given.

It is further ordered that the Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or writs, or upon the expiration of said sixty-day period from the date of the entry of the judgment, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

Done at Atlanta, Georgia, this 28 day of August, 1936.

(Signed) Sam'l H. Sibley, United States Circuit Judge.

[fol. 462] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 443 to 461 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in certain causes in said Court, numbered 7876 and 7977 respectively, wherein Sabine Towing Company, Inc., et al., are appellants and Sophia Brennan, et al., are appellees, and Charles Van Beeck, Administrator of the Estate of Edward C. Van Beeck, is cross-appellant, and Sabine Towing Company, Inc., et al., are cross-appellees as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed records numbered from 1 to 442 are identical with the printed records upon which said causes were heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 1st day of September, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 463] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 16, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, limited to the question whether the cause of action abated with the death of the mother of Edward C. Van Beeck.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 464] IN SUPREME COURT OF THE UNITED STATES

STIPULATION DESIGNATING PARTS OF RECORD TO BE PRINTED—Filed December 14, 1936

It is hereby stipulated and agreed by and between counsel of record for all parties in the above entitled and numbered cause that only the following parts of the record as filed in this court need be printed by the clerk, or under his supervision, for the hearing of said cause in the Supreme Court, to-wit:

Title of Paper	Record Page
1. Caption	
2. Petition for Limitation of Liability	2–9
3. Amended claim and answer of Sophia Brennan, et al.	34–42
4. Interlocutory decree on issue of liability	46–50
5. Stipulation of counsel, in re, Jennie Royackers, introduced in evidence before Samuel C. Lipscomb, Commissioner	164
6. Report of the commissioner, consisting of only the following parts:	
(a) General Statement	341–348
(b) Paragraph 8 of report	352–353
7. Paragraph 8 of the claimants' exceptions to the commissioner's report	380–381
[fol. 465]	
8. Suggestion of the death of Mrs. Jennie Royackers and order of substitution of Charles Van Beeck as administrator	390

Title of Paper	Record Page
9. Findings of Fact and Conclusions of Law:	
(a) Opening paragraph	391
(b) Paragraph 8	395
10. Conclusions of Law	395–396
11. Final decree	396–400
12. Petition for appeal and order thereon and assignments of error	401–406
13. The entire record in the cross appeal of Charles Van Beeck, administrator of the estate of Edward C. Van Beeck, vs. Sabine Towing Company, Inc., et al., except those parts usually omitted by the clerk and merely designated; but at least there should be printed the petition for cross appeal, cross assignments of error and the order of the court, as shown	433–435
14. Only that part of the opinion or decision rendered by the Circuit Court of Appeals relating to the said cross appeal, commencing about the middle of page 454 and ending about the middle of page 455 of the record, the beginning being "The cross appeal is taken to the rejection of a claim filed by Mrs. Jennie Royackers," etc.; and the ending being, "It is clear there could be no recovery on this claim."	454–455
15. Clerk's certificate	

[fol. 466] M. G. Adams, Counsel of Record for Charles Van Beeck, Administrator, etc. M. A. Grace, Counsel of Record for Sabine Towing Company, Inc., et al.

[fol. 467] [File endorsement omitted.]

Endorsed: Enter M. G. Adams. File No. 41,000. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 460. Charles Van Beeck, Administrator, etc., petitioner, vs. Sabine Towing Company, Inc., et al. Petition for writs of certiorari and exhibit thereto. Filed October 12, 1936. Term No. 460, O. T., 1936.